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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 7819/2000

% **18th July, 2013**

K.K. BHARDWAJ ..... Petitioner
Through Mr. H.K. Chaturvedi, Advocate

versus

D.V.B. & ORS. ..... Respondents
Through Mr. Vikram Nandrajog, Mr. Sushil Jaswal, Mr. Sheetesh Khanna, Advocates for the NDPL.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by the petitioner claiming the following reliefs:

> "a) Issue an appropriate writ/order/directions against the respondents thereby directing them to promote the petitioner as Legal Asstt. since Feb. 1987, alongwith all legal consequential benefits, as Jr. Clerk Mr. H.L. Verma, E.No. 16041-5 was appointed as legal Asstt. who joined his services in the year on 31.1.1974 though the petitioner joined his services on 26.6.1963; and he has not been called for interview even; though, if there is any charge, then the result of that candidate must be kept under sealed cover and always

subject to outcome of his case, therefore, the petitioner entitles for the relief;

b) Issue an appropriate writ/order/directions for quashing/setting-aside the penalty orders dated 6.8.1986, 29.9.1986 (appellate order), and 19.10.89 passed by the respondents illegally and unjustifidely;

c) Quash the order dt. 18.2.2000, by which even the petitioner was in general cadre not promoted as a section officer, though his all juniors have been promoted as section officer and direct the respondents to consider the case of the petitioner for higher promotion as per rules;

d) Issue directions to make the payment of the interest with regard to belated payment which was directed to be paid upto 31.5.1998 and was paid in the month of Feb. 1999, as per order dated 17.3.1998 in C.W.P. No. 5025/97;"

2. This writ petition was filed on 20.12.2000. At the end of the year 2000, orders which are sought to be quashed as stated in prayer 'b', viz of the years 1986 and 1989, cannot be sought on the ground of gross delay and laches. No doubt, Limitation Act, 1963 does not apply to a writ petition, however, a certain period of limitation is kept in mind and the same is overlooked only if certain representations are pending which are not decided by the Department and which is not so as per the facts in this case. Therefore, in the end of the year 2000, orders which are passed in the year 1986 i. e about 15 years back and in 1989 i. e about 11 years back cannot be permitted to be challenged and the writ petition with regard to challenge of

orders, as prayed for in prayer ‘b’, is dismissed on the ground of gross delay and laches.

3. Prayers ‘a’ and ‘c’ are connected because according to the learned counsel for the petitioner the petitioner seeks appointment as a Legal Assistant since February 1987 and thereafter further promotion by quashing of the order dated 18.2.2000. Once again, I cannot grant an entitlement to promotion claimed from February 1987 when a writ petition is filed in December 2000 i. e more than 13 years later. I would have been inclined to grant a theoretical promotion to the petitioner if a specific case was pleaded in the writ petition that promotion is to be granted as Legal Assistant in February 1987 purely and only by seniority on completing a particular years of service, however, there is no such cause of action laid down in the writ petition that petitioner automatically became entitled to be appointed to as a Legal Assistant merely on the ground of seniority and by completing particular years of service. Therefore, these prayers ‘a’ and ‘c’ are accordingly rejected on the ground of gross delay and laches.

4. That takes us to prayer ‘d’ for grant of interest from 31.5.1998 to February 1999 because the subsistence allowance is said to have been paid with delay pursuant to the order dated 17.3.1998 in C.W.P. No.

5025/1997 filed by the petitioner. A reading of the order dated 17.3.1998 shows that no direction for payment of interest was given in case petitioner receives the subsistence allowance with delay. What could be specifically prayed for and granted in an earlier writ petition, and the same is not granted will be barred by construction of *res judicata* if that relief is claimed in a subsequent proceeding. The prayer for interest because subsistence allowance was paid in February 1989 instead of May, 1998 also thus cannot be granted.

5. In view of the above, the writ petition is dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

JULY 18, 2013
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